IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5088 OF 1997

Pundalik Ramchandra Tuppad, Post Handral, Taluka Akkalkot, Post Karajagi, District Solapur. ... Petitioner

Versus

1. The State of Maharashtra
2. The Collector of Solapur
3. Chief Executive Officer, Zilla Parishad, Solapur.
4. Sub-Divisional Officer, Minor Irrigation (LS) Sub Division, Akkalkot. ... Respondents

Mr. Machhindra A. Patil for the petitioner.

Mr. Vinay Sonpal, AGP for the respondents.

CORAM : SMT. RANJANA DESAI & A.P. DESHPANDE, JJ.

DATED : 7TH AUGUST, 2006.

ORAL JUDGMENT :- (Per A.P. Deshpande, J.)

1. The petitioner was appointed as Muster Assistant under an Employment Guarantee Scheme and did work as such in the office of the Sub-Divisional Officer, Akola from 1/6/1979 till 23/6/1997. In accordance with the Scheme framed by the State Government, which was in turn, approved by the Supreme Court, the petitioner came to be absorbed in class IV post as

Assistant by order dated 3/6/1997 passed by the Chief Executive Officer of the Zilla Parishad, Solapur. The petitioner has been absorbed in class-IV post in the pay scale of 750-12-870-E.B.-14-940, which the petitioner was drawing when he was working as Muster Assistant. In the instant petition, the petitioner has challenged the order dated 3/6/1997 passed by the Chief Executive Officer, Zilla Parishad, Solapur.

2. It is a matter of common knowledge that the Maharashtra Employment Guarantee Act, 1978 laid down a Scheme making available guaranteed employment to the persons covered by the said Scheme for a given number of days. The Scheme never contemplated making of regular appointments and providing permanent employment. The said Scheme was having the same features as were present in a Scheme considered by the Supreme Court in the matter of ***Delhi Development Horticulture Employee' Union v. Delhi Administration, Delhi & Ors. reported in AIR 1992 SC 789*** viz. `Jawaharlal Nehru Rozgar Yojna'. The object of the Scheme introduced by the State Government was to provide guaranteed employment on the available work undertaken by the Government. It is reiterated that the Scheme did not envisage regular appointments to be made and thus no posts of Muster Assistant were sanctioned thereunder. Despite this position, the petitioner and other similarly situated were granted appointment to the post of Muster Assistant. Very many writ petitions were filed in the High Court, either arising out of the orders passed by the Industrial Court or Labour Court and

the High Court dealing with such matters held that the persons working under the Employment Guarantee Scheme cannot be directed to be regularised under the industrial legislation. One of the judgment which deals with the Scheme framed by the State Government under the Maharashtra Employment Guarantee Act is reported in ***2001 (2) Mh.L.J. 543 in the matter of Chief Executive Officer, Zilla Parishad, Ahmednagar v. Daulat Narsingrao Deshmukh & another***. The judgment relied upon by the learned single judge is a judgment dated 15/10/1999 delivered by another learned single judge in a batch of writ petitions being Writ Petition No.703 of 1997 and others, which were heard simultaneously. It has been categorically held in the said judgment that the nature of work under the Employment Guarantee Scheme is not an Industry. When the matter was pending before the Supreme Court, the State Government formulated a Scheme with a view to absorb the persons wrongly appointed under the Employment Guarantee Scheme. The said Scheme was framed under the Government Resolution dated 1/12/1995 and the same was approved by the Apex Court. Acting under the said Scheme, the petitioner came to be absorbed in class IV post. Now by this petition, the petitioner is claiming an appointment in class III post.

3. From the facts stated hereinabove, it is amply clear that the petitioner has no legal right, except right of absorption, under the Government Resolution of 1995 in class IV post and the petitioner was absorbed in the said post. Thus the petitioner cannot claim a right to be appointed in class III

post. We do not see any merit in this petition and the writ petition thus deserves to be dismissed. We accordingly dismiss the writ petition. Discharged the rule with no order as to costs.

4. At this stage, the learned counsel for the petitioner, placing reliance on the affidavit filed by the State Government, contends that depending upon the educational qualification, the Government considers the claim of the Muster Assistants for being absorbed in class III post. The learned counsel for the petitioner has not pointed out any such Government Resolution which so stipulates. However, if the petitioner has any such right recognised by any Government Resolution, it shall be open to the petitioner to make a representation to the Government.

[SMT. RANJANA DESAI, J.]

[A.P. DESHPANDE, J.]